REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus –

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Respondent.

CTA *EB* NO. 1262
(CTA Case No. 8342)

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DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Petitioner,

-versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1263
(CTA Case No. 8342)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista.
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
and
Ringpis-Liban, JJ.

Promulgated:

JUL 15 2016 4:24 p.m.

x---x

DECISION

BAUTISTA, J:

Submitted for decision of the Court of Tax Appeals ("CTA") *En Banc* under *Section 4(b)*[1], *Rule 8 of the 2005 Revised Rules of the CTA*, as

[1] *RULE 8. PROCEDURE IN CIVIL CASES*

amended, are two (2) consolidated Petitions for Review of the Decision[2] dated September 23, 2014, and the Amended Decision[3] dated December 19, 2014, rendered by the Court's Second Division ("Court in Division") in CTA Case No. 8342.

The dispositive portions of the Decision and Amended Decision promulgated on September 23, 2014 and December 19, 2014, respectively, read as follows:[4]

> Decision dated September 23, 2014
>
> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **[Php]12,633,590.90** in favor of petitioner, representing unutilized input VAT attributable to its zero-rated sales for the third quarter of 2009.
>
> **SO ORDERED.**
>
> Amended Decision dated December 19, 2014
>
> **WHEREFORE,** premises considered, respondent's *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit while petitioner's *Motion for Partial Reconsideration (With Motion to Re-open Trial)* is hereby **PARTIALLY GRANTED.** The September 23, 2014 Decision of this Court is hereby **MODIFIED.** Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **[Php]14,974,586.89** in favor of petitioner, representing unutilized input VAT attributable to its zero-rated sales for the third quarter of 2009.

SEC. 4. *Where to appeal; mode of appeal.* –
xxx xxx xxx
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *En Banc* shall act on the appeal.

[2] *Records, CTA Case No. 8342, Vol. 3, Decision,* pp. 1313-1366, with annex; penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justices Juanito C. Castañeda, Jr., and Caesar A. Casanova concurring.

[3] *Id., Amended Decision,* pp. 1443-1460; penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justices Juanito C. Castañeda, Jr., and Caesar A. Casanova concurring.

[4] *Id., Decision,* p. 1330; *Amended Decision,* p. 1459; emphases retained.

SO ORDERED.

On February 4, 2015, the Commissioner of Internal Revenue ("CIR") filed by registered mail a Petition for Review[5] with the CTA *En Banc*, docketed as CTA *EB* No. 1262, which prays that the afore-stated Decision and Amended Decision be reconsidered and a new one be entered dismissing the original petition before the Court *a quo*.[6]

On the same date, Deutsche Knowledge Services, PTE. Ltd., ("Deutsche") also filed a Petition for Review[7], docketed as CTA *EB* No. 1263, which prays that the Court *En Banc*: *(1)* modify the afore-stated Decision and Amended Decision insofar as it reduced the total amount of input VAT refund granted to it; *(2)* issue an order requiring respondent to refund or to issue a tax credit certificate ("TCC") in its favor in the amount of Php42,147,646.37, representing its excess and unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the 3rd quarter of calendar year ("CY") 2009; and *(3)* remand the case to the Court in Division for the reception of its supplemental evidence for the purpose of complying with the latter's documentary requirements.

The Parties[8]

The CIR is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), empowered to perform the duties of her office, including, among others, the duty to act upon and approve claims for refund or tax credit, as provided by law. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman Quezon City.

Deutsche is the Philippine branch of a multinational company organized and existing under the laws of Singapore. It is authorized to conduct business in the Philippines as a regional operating headquarters ("ROHQ") by the Securities and Exchange Commission ("SEC") as of April 25, 2005. It is a VAT-registered entity with Taxpayer Identification ("TIN") No. 238-763-115-000. It provides services in general administration and planning, business planning and coordination, sourcing/procurement of raw materials and

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[5] *Rollo, CTA EB No. 1262, Petition for Review,* pp. 134-222.
[6] *Id.,* p. 142.
[7] *Rollo, CTA EB No. 1263, Petition for Review,* pp. 6-130.
[8] *Records, Vol. 3, Decision, Facts,* pp. 1313-1314.

components, corporate finance advisory services, marketing control and sales promotion, training and personnel management, logistic services, research and development services and product development, technical support and maintenance, data processing and communication, and business development.

The Facts

As stated in the Decision[9] dated September 23, 2014, the factual antecedents of this case are as follows:

> Petitioner filed with the BIR its Quarterly VAT Return for the third quarter of CY 2009 on October 19, 2009.
>
> On April 29, 2011, petitioner filed with the BIR Revenue District Office No. 44 an Application for Tax Credits/Refunds (BIR Form No. 1914) of its excess and unutilized input VAT for the third quarter of CY 2009 in the total amount of [Php]42,147,646.37.
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> Alleging inaction on the part of respondent, petitioner filed the instant Petition for Review before this Court on September 26, 2011.
>
> In her Answer filed on November 2, 2011, respondent alleged several Special and Affirmative Defenses. She argued that petitioner, in claiming for its refund, must prove compliance with the registration, invoicing, and accounting requirements of a VAT taxpayer; that the complete documents to support the administrative claim for refund have been submitted; and that the input taxes allegedly paid are attributable to zero-rated sales and have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters.
>
> Respondent further argues that petitioner failed to exhaust all administrative remedies before elevating its claim before this Court, since petitioner did not pass the required supporting documents, thus, the 120-day period did commence. Respondent further argues that petitioner's failure to exhaust all administrative remedies is fatal to its claim as this is jurisdictional in nature.

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[9] *Records, CTA Case No. 8342, Vol. 3, Decision,* pp. 1313-1366

Finally, considering all its foregoing arguments and the fact that claims for refund are in the nature of tax exemptions and should be construed strictly against the claimant, respondent argues that the instant claim should be dismissed for lack of jurisdiction or lack of merit.

During trial, petitioner presented and formally offered pieces of documentary and testimonial evidence. In the Resolution dated September 24, 2012, this Court admitted into evidence Exhibits "A" to "Z-1462". On October 22, 2012, respondent manifested that she will no longer present her evidence and that she is submitting the case for decision. Thus, both parties were given thirty (30) days from the said date, within which to file their respective Memorand[a].

Respondent filed her Memorandum on November 12, 2012. On the other hand, petitioner filed a Motion for Extension of Time to File Memorandum 10 on November 21, 2012, which this Court granted in an Order dated November 22, 2012.

On December 19, 2012, petitioner filed a Motion for Leave to Present Supplemental Evidence. In a Resolution dated January 2, 2013, this Court held in abeyance the filing of petitioner's Memorandum and ordered respondent to comment on petitioner's motion. Respondent filed an Opposition and/or Comment (Re: Motion for Leave to Present Supplemental Evidence) on January 25, 2013. In a Resolution dated February 13, 2013, this Court granted petitioner's Motion for Leave to Present Supplemental Evidence, scheduled the presentation of petitioner's supplemental documentary evidence on March 4, 2013, and deferred the filing of petitioner's Memorandum.

Petitioner proceeded to present and formally offer its supplemental evidence. In a Resolution dated July 4, 2013, this Court admitted into evidence Exhibits "M-58", "M-59", "M-60", "M-61", "M-62", "M-63", "M-64", "M-65", "M-66", "M-67", "M-68", "M-69", "M-70", "M-71", "M-72", "M-73", "M-74", "M-75", "M-76", "M-77", "M-78", "M-79", "M-80", "M-81", "M-82","M-83", "M-84", "M-85", "Y", and "Y-1", and ordered petitioner and respondent to submit their Memorandum and Supplemental Memorandum, respectively.

Petitioner filed a Memorandum and Motion for Leave to Submit Supplemental Evidence on September 17, 2013. In a Resolution dated October 1, 2013, this Court admitted petitioner's Memorandum and ordered respondent to comment on petitioner's Motion for Leave to Submit Supplemental Evidence. Respondent failed to file her comment. In a Resolution dated November 18, 2013, petitioner's Motion for Leave to Submit Supplemental Evidence was granted, but held in abeyance the admission of the exhibits until the marking, presentation and identification of the subject exhibits by the Court-commissioned Independent Certified Public Accountant (CPA).

After the presentation of the Independent CPA, petitioner orally offered Exhibits "Z-1463" to "Z-1470". Considering that no objection was offered by respondent, the said exhibits were admitted into evidence and the parties were ordered to file their respective Supplemental Memoranda.

The case was submitted for decision on December 19, 2013, considering petitioner's Manifestation filed through registered mail on December 9, 2013 and received by this Court on December 13, 2013, stating that petitioner will no longer file its Supplemental Memorandum and considering further the Records Verification Report dated December 16, 2013 of the Records Division stating that respondent failed to file a Supplemental Memorandum.

On September 23, 2014, the Court in Division promulgated the assailed Decision partially granting the Petition for Review and ordering respondent to refund or to issue a TCC in the amount of Php12,633,590.90 in favor of petitioner, representing its unutilized input VAT attributable to its zero-rated sales for the third quarter of 2009.[10]

On October 9, 2014, both parties filed, by registered mail, a Motion for Partial Reconsideration (Re: Decision dated 23 September 2014)[11] for the CIR; and a Motion for Partial Reconsideration (Re: Decision dated September 23, 2014) (With Motion to Re-Open Trial)[12], for Deutsche.

On December 19, 2014, the Court in Division promulgated the assailed Amended Decision[13] denying the CIR's Motion for Partial Reconsideration for lack of merit, while partially granting Deutsche's

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[10] *Records, Vol. 3, Decision,* pp. 1313-1331.
[11] *Id.,* pp. 1381-1390.
[12] *Id.,* pp. 1395-1426, with annexes.
[13] *Records, Vol. 3, Amended Decision,* pp. 1443-1460.

Motion for Partial Reconsideration, increasing the amount of tax refund or TCC from Php12,633,590.90 to Php14,974,586.89 but denying its Motion to Re-open Trial.

On February 4, 2015, both parties filed their separate Petitions for Review, docketed as CTA *EB* No. 1262[14] *via* registered mail by the CIR and CTA *EB* No. 1263[15] by Deutsche.

On February 18, 2015, the Court *En Banc* issued a Minute Resolution[16] consolidating CTA *EB* Nos. 1262 and 1263.

On March 11, 2015, the Court *En Banc* issued a Resolution[17] requiring both parties to file their respective comments, not a motion to dismiss.

On April 8, 2015, Deutsche filed its Comment (To the Petition for Review dated February 3, 2015)[18]; while *per* Records Verification Report[19] by the Judicial Records Division dated April 15, 2015, the CIR failed to file her comment.

On May 8, 2015, the Court *En Banc* issued a Resolution[20] ordering the parties to file their respective Memoranda.

With the filing of Deutsche's Memorandum[21] by registered mail on June 22, 2015, and the Records Verification Report[22] by the Judicial Records Division dated July 20, 2015 stating that the CIR failed to file her memorandum, the Court *En Banc* resolved[23] to submit the case for decision on August 5, 2015, hence, this Decision.

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[14] *Rollo, CTA EB No. 1262, Petition for Review,* pp. 134-222, with annexes; entitled *"Commissioner of Internal Revenue vs. Deutsche Knowledge Services, Pte. Ltd."*
[15] *Rollo, CTA EB No. 1263, Petition for Review,* pp. 6-130, with annexes; entitled *"Deutsche Knowledge Services, Pte. Ltd. vs. Commissioner of Internal Revenue."*
[16] *Rollo, CTA EB No. 1262,* pp. 224-225.
[17] *Id.,* pp. 228-229.
[18] *Id.,* pp. 235-245.
[19] *Id.,* p. 246.
[20] *Id.,* pp. 248-249.
[21] *Id., Memorandum,* pp. 250-286.
[22] *Rollo, CTA EB No. 1262,* p. 288.
[23] *Id.,* pp. 290-291.

The Issues

On one hand, the CIR alleged the sole assignment of error of WHETHER DEUTSCHE IS ENTITLED TO THE REFUND OR ISSUANCE OF TCC FOR EXCESS OR UNUTILIZED INPUT VAT IN THE AMOUNT OF PHP42,147,646.37.[24]

Deutsche, on the other hand, alleged the following assignment of errors:[25]

1. WHETHER THE COURT IN DIVISION ERRED IN NOT FINDING THAT IT HAS DULY PROVEN BY PREPONDERANT EVIDENCE THAT ITS SALES FOR THE 3RD QUARTER OF CY 2009 WERE ZERO-RATED AND MADE TO NON-RESIDENT CORPORATIONS DOING BUSINESS OUTSIDE THE PHILIPPINES;

2. WHETHER THE COURT IN DIVISION ERRONEOUSLY CONCLUDED THAT IT FAILED TO MEET THE SUBSTANTIATION REQUIREMENTS UNDER THE 1997 NIRC, AS AMENDED, AND REVENUE REGULATIONS NO. 16-2005;

3. WHETHER THE COURT IN DIVISION ERRED IN DISALLOWING ITS CLAIMED INPUT VAT ON PURCHASES OF GOODS AND SERVICES SUPPORTED BY INVOICES OR OFFICIAL RECEIPTS DATED OUTSIDE THE PERIOD OF CLAIM; AND

4. WHETHER THE COURT IN DIVISION ERRED IN DENYING ITS MOTION TO RE-OPEN TRIAL.

Deutsche's arguments[26]

Deutsche claims that the CTA in Division erred in not finding that it has duly proven by preponderant evidence that its sales for the third quarter of CY 2009 were zero-rated and made to non-resident corporations doing business outside the Philippines; and that the Court should take judicial notice of other cases decided by other

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[24] *Rollo, CTA EB No. 1262, Petition for Review,* pp. 11-12.
[25] *Rollo, CTA EB No. 1263, Petition for Review,* p. 14.
[26] *Rollo, CTA EB No. 1262, Memorandum,* pp. 258-282.

divisions of the Court which have recognized that its non-resident clients are in fact doing business outside the Philippines.

It further asserts that *Section 108(B)(2) of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*, merely provides that in order to be considered VAT zero-rated, the services rendered to entities doing business outside the Philippines must be paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* ("BSP"); that it does not have to present official receipts ("OR") to prove zero-rated sales of services, or invoices to prove zero-rated sales of goods; that the invoicing requirements under *Section 113 of the 1997 NIRC* is not necessary to prove zero-rated sales of goods; that there is nothing in the law that makes any pronouncement on one document that is uniquely determinative of the existence of zero-rated sales, to the exclusion of all other equally competent and relevant evidence; that it should not be penalized for its client's error in not separately indicating the amount of VAT in the OR that they issue to petitioner; and that claims for input VAT that are supported by invoices or ORs dated outside the period of claim are specifically allowed by *Revenue Memorandum Circular ("RMC") No. 42-03.*

The CIR's arguments[27]

The CIR argues that Deutsche failed to prove that it has strictly complied with the submission of all supporting and relevant documents provided under *Revenue Memorandum Order ("RMO") No. 53-98* and other existing rules and regulations on its administrative claim; that mere filing of an administrative claim for refund or issuance of TCC, without submitting the complete documents in support thereof, is not conclusive to sustain its contention that it has the right to claim a refund; that taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provisions of the law; and that tax refunds are construed *strictissimi juris* against the person claiming the exemption.

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in both Petitions for Review.

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[27] *Rollo, CTA EB No. 1262, Petition for Review*, pp. 137-141; the CIR's arguments in her Petition for Review in CTA *EB* No. 1262 were adopted due to her failure to file a Memorandum.

With regard to the CIR's Petition for Review, the Court *En Banc* finds that the same issues were raised in her Answer and Motion for Reconsideration before the Court in Division, and these have been exhaustively discussed by the Court in Division in the assailed Decision and Amended Decision. Thus, the Court *En Banc* finds no merit in her Petition for Review.

The Court *En Banc* will now proceed to discuss Deutsche's Petition for Review.

Deutsche claims that it was erroneous for the Court in Division not to grant its Motion to Re-open Trial.

Section 5, Rule 30 of the 1997 Rules of Civil Procedure provides as follows:

> Sec. 5. Order of trial. - Subject to the provisions of section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
>
> xxx xxx xxx
>
> > (f) The parties may then respectively adduce rebutting evidence only, unless the court, for good reasons and in the furtherance of justice, permits them to adduce evidence upon their original case.

In the instant case, Deutsche filed a Motion to Re-Open Trial only after the Court in Division has rendered a decision partially granting its petition. The Court *En Banc* sees this as a feeble attempt on the part of Deutsche to secure a favorable judgment.

The evidence that it seeks to present are computer-generated reports, which in the view of the Court *En Banc,* could have easily been produced during the proceedings before the Court in Division.

The Court *En Banc* agrees with the Court in Division that the additional documentary evidence that it seeks to present are "forgotten evidence." By seeking the indulgence of the Court in Division for presenting additional documentary evidence, Deutsche cannot now claim that it was deprived of the opportunity to present additional evidence.

Deutsche insists that the Court *En Banc* should take judicial notice of other cases decided by other divisions of the Court, which have recognized its non-resident clients as in fact doing business outside the Philippines.

The Court *En Banc* disagrees.

Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them. Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support.[28] The principle is based on convenience and expediency in securing and introducing evidence on matters which are not ordinarily capable of dispute and are not *bona fide* disputed.[29]

In adjudicating a case on trial, generally, courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding that both cases may have been tried or are actually pending before the same judge.[30]

Also, the Court *En Banc* finds no merit in Deutsche's allegation that being civil in nature, the quantum of evidence that is required to sustain its claim for input VAT refund is mere preponderance of evidence, and that there is no need to present zero-rated sales of services or invoices to prove its zero-rated sales of goods.

The Court has held, in a long line of cases, that in claims for VAT refund for zero-rated sales of services or goods, the taxpayer must prove compliance with the substantiation requirements under *Sections 110(A) and 113(A)(2) of the 1997 NIRC,* in relation to *Sections 4.110-2, 4.110-3, 4.110-8 and 4.113-1 of Revenue Regulations No. 16-05.* As correctly held by the Court in Division, "non-compliance with the invoicing requirements, *i.e.,* issuance of duly registered official

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[28] *Republic vs. Sandiganbayan, et al. G.R. No. 152375,* December 16, 2011, 662 SCRA 152.
[29] *Id.*
[30] *Id.,* citing *Manuel V. Moran, 5 Comments on the Rules of Court, 1980 ed.,* p. 409, citing *Municipal Council of San Pedro Laguna v. Colegio de San Jose,* 65 Phil. 318 (1938); and *Prieto v. Arroyo,* 121 Phil. 1335 (1965).

receipts for the sale of services, will not give rise to effective zero-rating of the transactions of a taxpayer."

Likewise, the Court *En Banc* disagrees with Deutsche's allegation that the claims for input VAT that are supported by invoices or ORs dated outside the period of claim should be allowed. This has been aptly explained by the Court in Division in its Amended Decision, to wit:

> xxx xxx xxx
>
> Petitioner should declare the input VAT in the corresponding taxable quarters when the purchases of goods were consummated or when the purchases of services were paid, as the case maybe, pursuant to Section 110(A)(2) of the [1997 NIRC], as amended, which provides:
>
> SEC. 110. *Tax Credits.-*
>
> (A) *Creditable input Tax. -*
>
> xxx xxx xxx
>
> (2) The input tax on **domestic purchase** or importation **of goods** or properties by a VAT-registered person **shall be creditable:**
>
> (a) To the purchaser **upon consummation of sale** and on importation of goods or properties; and
>
> (b) To the importer upon payment of the value added tax prior to the release of the goods from the custody of the Bureau of Customs.
>
> *Provided,* That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000):

> *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally,* That in the case of **purchase of services,** lease or use of properties, the input tax shall be **creditable** to the purchaser, lessee or licensee **upon payment** of the compensation, rental, royalty or fee. *(Emphasis supplied)*

In *Lepanto Consolidated Mining Co. vs. CIR,* the Court held that:

> The alleged unutilized input VAT of P5,820,863.87 should be denied since the supporting invoices and official receipts thereof bore dates which were earlier than the period of petitioner's claim. Section 110(A)(2) of the 1997 Tax Code provides:
>
> xxx xxx xxx
>
> It is clear from the above-quoted provisions of law that for purchases of goods, the corresponding input value added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty or fee, that is, upon the date of official receipt. Section 110(A) is explicit. It states 'upon consummation', in the case of domestic purchases of goods, and 'upon payment', in the case of purchases of services. It does not provide any qualification, such as 'upon delivery of invoice or official receipt' which is the main thesis of petitioner's contention.
>
> In a resolution of the case entitled Telecommunications *Technologies Philippines, Inc.* vs. *Commissioner of Internal Revenue, CTA Case No. 6168, promulgated on July 28, 2004,* this Court elucidated that 'the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoice evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be

> available as tax credit to the purchaser only upon payment of the compensation or fee i.e., upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.
>
> Thus, it is indubitable on the part of the petitioner to declare the input value added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoice and for payment of services, as evidenced by VAT official receipt.
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> Therefore, the amount of input VAT of P5,820,863.87 which is supported by VAT invoices and official receipts dated earlier than the period of petitioner's claims can no longer be claimed for refund pursuant to Section 110(A) in relation with Section 112(A) of the 1997 National Internal Revenue Code.

> Applying the above ruling, petitioner's claimed input VAT on purchases of goods/services supported by invoices/OR dated outside the period of claim cannot be considered since the input taxes should have been declared in the corresponding taxable quarter when the purchases of goods were consummated or when purchases of services were paid pursuant to Section 110(A)(2) in relation to Section 112(A) of the [1997 NIRC], as amended.

Anent Deutsche's claim that it should not be penalized for the its client's error in not separately indicating the amount of VAT in the OR that they issue to petitioner, *Section 113(B)(2)(a) of the 1997 NIRC* specifically provides that "the amount of the tax shall be shown as a separate item in the invoice or receipt," hence, the Court in Division did not commit an error in disallowing the input taxes covered by ORs where the amount of input VAT were not separately indicated.

This is anchored on the basic rule in taxation that tax refunds, being in the nature of tax exemptions, are construed *strictissimi juris* against the taxpayer and liberally in favor of the government.[31] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly

[31] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015.

proven.[32] The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law.[33]

Thus, finding no reversible error in the assailed Decision and Amended Decision, the Court *En Banc* affirms the assailed Decision and Amended Decision of the Second Division dated September 23, 2014 and December 19, 2014, respectively.

WHEREFORE, premises considered, the Petitions for Review filed by the Commissioner of Internal Revenue and Deutsche Knowledge Services Pte., Ltd., are hereby **DENIED,** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO See concurring opinion
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

[32] *Kepco Philippines, Corp. v. Commissioner of Internal Revenue,* G.R. No. 179961, January 31, 2011, 641 SCRA 70.

[33] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.,* G.R. No. 127105, June 25, 1999, 309 SCRA 87.

ON LEAVE
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ON LEAVE
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution,* it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1262** (CTA CASE NO. 8342)
-versus-	
DEUTSCHE KNOWLEDGE SERVICES PTE, LTD., *Respondent.*	

DEUTSCHE KNOWLEDGE SERVICES PTE, LTD., *Petitioner,*	**CTA EB NO. 1263** (CTA CASE NO. 8342)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 15 2016 4:24p.m.

X--X

CONCURRING OPINION

DEL ROSARIO, PJ.:

I concur with the findings of the *ponencia* in denying the present consolidated Petitions for Review simultaneously filed by the Commissioner of Internal Revenue (CIR) and Deutsche Knowledge Services Pte. Ltd (DKS) on February 4, 2015.

I find it necessary to address the argument raised by the CIR in her *Answer*[1] that DKS did not observe the doctrine of exhaustion of administrative remedies as it failed to submit complete documents required under Revenue Memorandum Order (RMO) No. 53-98. The CIR argues that DKS' failure to submit complete supporting documents warrants the dismissal of the petition for lack of jurisdiction. She also insists in her petition that it is mandatory for DKS to have proven before the Court in Division that it has strictly complied with the submission of documents provided under RMO No. 53-98 to justify the grant of its claim for refund.[2]

The issue involved in this case is not novel. In the earlier case of *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte, Ltd.*[3] involving the same parties but pertaining to a different quarter for the taxable year 2009, I had the occasion to expound on this very point, *viz*:

> "The *ponencia* is correct in rejecting the CIR's contention, citing *Commissioner of Internal Revenue vs. Team Sual Corporation (Formerly Mirant Sual Corporation)*,[4] that submission of documents enumerated in RMO No. 53-98 is not a requirement for a grant of tax refund.
>
> Moreover, there is no showing that the CIR sent a written notice requiring DKS to submit additional documents -- a process that is indispensable in computing the 120+30 day period. The recent *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* (*Total Gas case*)[5] is instructive on this point, *viz*:
>
>> 'To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.

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[1] *CTA Division Docket*, pp. 59-78.
[2] *Rollo*, p. 138.
[3] CTA EB Nos.1266 & 1267, February 17, 2016; penned by Honorable Associate Justice Caesar A Casanova.
[4] G.R. No. 205055, July 18, 2014.
[5] G.R. No. 207112, December 8, 2015.

> xxx *First,* the 120-day period had commenced to run and the 120+30 day period was, in fact, complied with. As already discussed, **it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120- day period. It must again be pointed out that *this in no way precludes the CIR from requiring additional documents necessary to decide the claim,* or *even denying the claim if the taxpayer fails to submit the additional documents requested.***
>
> *Second,* the CIR **sent no written notice informing Total Gas that the documents were incomplete or required it to submit additional documents.** As stated above, such notice by way of a written request is required by the CIR to be sent to Total Gas. Neither was there any decision made denying the administrative claim of Total Gas on the ground that it had failed to submit all the required documents. It was precisely the inaction of the BIR which prompted Total Gas to file the judicial claim. Thus, **by failing to inform Total Gas of the need to submit any additional document, the BIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents.**' (*Emphases supplied*)

Novel in the *Total Gas case* is the distinction between an appeal from the CIR's decision on the merits and inaction on the taxpayer's claim for refund involving input Value-Added Tax (VAT), *viz*:

> 'A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. **If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request**, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim.** It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. **Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.**
>
> In the present case, however, Total Gas filed **its judicial claim due to the inaction of the BIR.** Considering that the

> administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se.* Consequently, **the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.** The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim.' (*Emphases supplied*)
>
> In other words, if the appeal was made from the CIR's decision on the merits, it is crucial for the taxpayer to have submitted all the documents in the administrative level. Failure to do so would bar the taxpayer from presenting additional documents to this Court. If the appeal was made due to the CIR's inaction, the taxpayer is not precluded from submitting additional documents to prove its claim for refund." (*Boldfacing supplied*)

The appeal in this case involves the CIR's inaction. Thus, DKS was allowed to present in evidence additional documents not submitted in the administrative level and such evidence was correctly considered by the Court in Division in arriving at the assailed Decision dated September 23, 2014 and Amended Decision dated December 19, 2014 to refund or issue a Tax Credit Certificate in favor of DKS.

All told, I **VOTE** to **DENY** the Petitions for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice